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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/620,211	03/29/96	PURVIS	H

C5M1/0828

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EXAMINER	
CHOP,A	
ART UNIT	**PAPER NUMBER**
3509	

DATE MAILED: 08/28/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/620,211	Purvis et al.
Examiner	**Group Art Unit**
Andrea Chop	3509

☒ Responsive to communication(s) filed on *6/9/97 and 7/7/97* .

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-14* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-3, 6, and 9-14* is/are rejected.

☒ Claim(s) *4, 5, 7, and 8* is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on *Jun 9, 1997* is ☒approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☒ Interview Summary, PTO-413 Paper #'s 5 and 8

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Drawings

1. The proposed drawing correction, filed on 6/9/97 has been approved.

Claim Rejections - 35 USC § 112

2. Claim 12 rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns Claim 12, "ground plate means" does not conform to 35 USC 112, sixth paragraph and should be chnaged to --ground anchoring means-- for consistency with the other claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

4. Claims 1-3, 6, 9-14 are provisionally rejected under 35 U.S.C. 103(a) as being obvious over copending Application No. 08/755,596, which has a common inventor with the instant application, in view of Lamb 2,136,696, Bourn et al. and Stewart, Jr.

Application No. 08/755,596 discloses the claimed invention, but lacks a toeboard, a means for extending the vertical height of the guard rail system, and a ground anchoring means.

Lamb teaches the use of a telescopically adjustable toeboard. It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the guard rail system to have a telescopically adjustable toe

board in view of Lamb '696 in order provide a means to protect objects from rolling off a staircase or balcony where the guard rail system is installed and to allow adjustability of the toeboard in the same manner as the side rails, i.e., telescoping capability.

Bourn et al. teaches the use of a means for extending the vertical height of a guardrail system. It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the guard rail system to have a means for extending the vertical height thereof in view of Bourn et al. in order to provide a more versatile guard rail system which can be adjusted vertically based on the site circumstances, height of workers, etc.

Stewart, Jr. shows a ground anchoring means (that portion of plate 12 which connects with 13; the other portion of 12 being considered as the anchor bracket). It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the guard rail system to have a ground anchoring means in view of Stewart, Jr. in order to provide a more stable connection to the ground surface.

Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e) if patented. This provisional rejection under 35 U.S.C. 103(a) is based upon a presumption of future patenting of the conflicting application.

This provisional rejection might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application prior to the effective U.S. filing date of the copending application under 37 CFR 1.131.

Allowable Subject Matter

5. Claims 4, 5, 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Remarks

6. Applicant states that the common asignment of the parent Application 08/755,596 and the present application obviates the rejection under 103 (as applicable under 102(e)); the common assigment merely obviates a rejection under 102(f)/103 or 102(g)/103. As stated above, this 102(e)/103 type rejection can only be overcome by either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and

is thus not the invention "by another," or by a showing of a date of invention for the instant application prior to the effective U.S. filing date of the copending application under 37 CFR 1.131.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea Chop whose telephone number is (703) 305-6358. The fax numbers for the Group are (703) 305-3597/8.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

ANTHONY KNIGHT
PRIMARY EXAMINER
GROUP 3500

AC
AMC
August 27, 1997